withdrawal. The expenses incurred for construction and repair of broken drains are I think such damages.

In the present case, I would therefore allow expenses for the construction, repair and clearing of drains and earthworks under item dated 27th February, 1967. I would disallow items dated 7th June, 1967 road blocks; 30th December, 1968 and 30th April, 1969 construction of road; item dated 11th November, 1969 road and drainage; item dated 26th December, 1969 road and item dated 30th June, 1970 grass cutting, levelling and road repairs.

I would also disallow expenses for cutting grass, anti-malarial charges, quit rents and assessments.

I therefore enter judgment for the plaintiffs in the sum of $47,928.65 and costs.

Judgment for the plaintiffs.

Solicitors: *Skrine & Co.; Joseph & Son.*

WONG LOK KHIAM v. DATO PETER LO SU YIN & ORS.

[O.C.J. (Seah J.) November 15, 1971]

[Kota Kinabalu — Notice of Motion No. 2 of 1971]

Practice and Procedure — Injunction — Interim injunction — Extension of period — Principle of preventing irreparable injury.

The burden of proving that an interim injunction should be continued until after the trial of the suit rests on the applicant throughout.

In this notice of motion the plaintiff in his supporting affidavits in an application for the extension of the interim injunction stressed two main points: (1) that pending the determination of the issue the matters should be kept in *status quo* and (2) that serious complications and irreparable damage would result if the said interim injunction should not be renewed.

Held, allowing the motion: (1) in exercising its jurisdiction by way of interlocutory injunction, the court acts upon the principle of preventing irreparable injury;

(2) the plaintiff had discharged the burden that irreparable damage would result if the interim injunction was not renewed. No injustice would be suffered by the defendants if the interim injunction was extended.

Cases referred to:-

(1) *Jones* v. *Pacaya Rubber & Produce Co. Ltd.* [1911] 1 K.B. 455 at p. 457.

(2) *Harman Pictures N.V.* v. *Osborne & Ors.* [1967] 2 All E.R. 324.

(3) *Donmar Productions Ltd.* v. *Burt & Anor.* [1967] 2 All E.R. 338 & 339.

NOTICE OF MOTION.

W. K. Loo for the applicant/plaintiff.

Nicholas Fung for the respondent/defendants.

Seah J.: On the 18th October, 1971 the Honourable the Chief Justice of the High Court in Borneo granted an interim injunction to restrain the abovenamed defendants by themselves their agents and servants or otherwise from acting in the capacity as the newly elected office bearers and for delegates of the Sabah Chinese Association and from taking control of the Headquarters of Sabah Chinese Association at No. 6, Beach Street, 1st Floor, Kota Kinabalu, and from taking possession of any documents, papers or files belonging to Sabah Chinese Association and to keep matters in *status quo* prior to the meeting convened by its President Dato Peter Lo Su Yin on the 16th October 1971 until the 15th November 1971, namely today, on the *ex parte* application of the plaintiff. I have now a notice of motion filed by the plaintiff praying for an order that the period of the said interim injunction granted on the 18th day of October, 1971 be extended until trial of the Civil Suit No. 340 of 1971. The plaintiff filed an affidavit in support of the extension. On or about the 12th November, 1971 the plaintiff swore a supplementary affidavit which is filed herein. It is settled law that the burden of proving that the said interim injunction should be continued until after the trial of Civil Suit No. 340 of 1971 rests on the plaintiff throughout.

In his supporting affidavits, the plaintiff stresses two main points, namely that pending the determination of the issue the matters should be kept in *status quo* and that serious complications and irreparable damage would result if the said interim injunction should not be renewed.

Buckley L.J. in *Jones* v. *Pacaya Rubber & Produce Co. Ltd.*(1) at page 457 said:

"The plaintiff now asks the court to grant an injunction until the trial to restrain the defendant company from forfeiting the shares. The question is, there being certainly a case to be tried, what is the proper order to make? In all cases of applications for interlocutory injunction the governing principle is that pending the settlement of the dispute between the parties the court will as far as possible keep matters in *status quo*."

In *Harman Pictures N.V.* v. *Osborne & Others*(2) Goff J. held that:

"in granting or withholding interlocutory relief the court would have regard to the balance of convenience but the governing consideration was the preservation of the *status quo*."

Ungoed-Thomas J. in *Donmar Productions Ltd.* v. *Burt & Anor.*(3) said:

"So in an application for the interlocutory injunction the application must establish a probability or a strong *prima facie* case that he is entitled to the right of whose violation he complains and, subject to this being established, the governing consideration is the maintenance of the *status quo* pending the trial.

It is well established that in deciding whether the matter shall be maintained in *status quo* regard must be had to the balance of convenience and to the extent to which any damage to the plaintiff can be cured by payment of damages rather than by the granting of an injunction."

In this motion, the plaintiff brings the suit not in his personal capacity but as secretary-general of the Sabah Chinese Association. In exercising its jurisdiction by way of interlocutory injunction, the court acts upon the principle of preventing irreparable injury. I am satisfied on the affidavits filed herein that the plaintiff has discharged the burden that irreparable damage would result if the interim injunction dated the 18th October, 1971 is not renewed accordingly. I have also considered on the one hand, the submission made by counsel for the defendant with regard to his clients'

interest. In my opinion, no injustice would be suffered by the defendant Dato Peter Lo Su Yin and/or the other defendants named herein if the interim injunction is extended. The notice of motion No. 3 of 1971 to discharge the said interim injunction remains on the cause list and has not been struck out or dismissed. He and the other defendants named herein are at liberty to come before the court with a fresh motion on another day when counsel for the defendants is ready to proceed with the hearing of the case. Counsel for the defendants urged the court to extend the interim injunction granted by the Honourable the Chief Justice on the 18th October, 1971 until the Notice of Motion No. 3 of 1971 could be heard by the learned Chief Justice. I asked counsel what is the merit in this procedure since his clients can appear before the court on another date to have the said interim injunction discharged. Counsel is unable to give a satisfactory reply to this question and I see no merit in this submission.

In my judgment, the notice of motion is hereby allowed and I hereby order that the interim injunction granted by the Chief Justice on the 18th October, 1971 be continued until after the trial of Civil Suit No. 340 of 1971 or until further order subject to the plaintiff or his counsel giving the usual undertaking as to damages in writing to be filed in this registry.

I reserve the costs of this motion to the trial judge of this suit for his disposal.

Order accordingly.

PRIVY COUNCIL REPORT

LOH BOON SIEW v. CHIN KIM & ANOR.

[P.C. (Lord Pearson, Lord Hodson, Lord Simon of Glaisdale, Lord Cross of Chelsea, and Sir Gordon Willmer) February 8, 1972]

[Privy Council Appeal No. 34 of 1970]

Contract — Sale of land — Repudiation — Inference of acquiescence in — Option — Default in exercising of in strict compliance of terms — Time made of the essence — Decree for specific performance.

Limitation — Contract — Breach of — Claim for damages.

Practice and Procedure — Writ — Specific performance — No claim for damages in the alternative.

This was an appeal from the decision of the Federal Court ([1970] 1 M.L.J. 197) allowing an appeal from a judgment and order of the High Court by which the appellant was granted specific performance of a contract to purchase a certain piece of land. On this piece of land there was a big house in which the vendors/respondents lived, and two or three small houses which were let to tenants who were protected by the Control of Rent Ordinance, 1956.

On May 16, 1961, the parties entered into a contract of sale of the said land at the price of $160,000. Briefly, the agreement was as follows. In consideration of $1,200 paid to the vendors by the purchaser/appellant, the vendors granted him an option of purchase at the price of $160,000 to be exercised within 6 months of the signing of the agreement. During such period the purchaser was to supply plans for submission by the vendors to the authorities for planning permission. Upon receipt of such permission, the purchaser was to pay the vendors forthwith the sum of $40,000 by way of deposit to account for the purchase price, and the balance of $120,000 within six months thereafter. However, in the event of planning permission being refused, the option was to be automatically extended for a further 7 months. One of the conditions of the contract was that on payment by the purchaser of the sum of $40,000, the vendors undertook to take steps to apply to the Rent Assessment Board for permission to evict the tenants on the land. It was also provided that if the vendors were unable to give vacant possession of the land, they would refund the sum of $40,000 to the purchaser

In the event, planning permission was not forthcoming and the option became extended, however, by a further agreement on November 11, 1961, whereby in consideration of a further sum of $1,200, the vendors expressly agreed to the extension of the option to May 15, 1962.

On May 5, 1962, the purchaser purported to exercise his option by remitting $40,000 to the solicitors who had drawn up the agreement for both parties. On May 4, 1962, one of the vendors died. There was a lapse of some time within which period probate was applied for.

On or about June 8, 1962, the deposit of $40,000 was returned to the purchaser on the ground that the option had not been "duly exercised". Thereafter, there was no further correspondence between the parties, or any intimation given by the purchaser as to his intentions regarding the property until the issue of a writ on August 29, 1966, in which he claimed specific performance of the contract.

The vendors pleaded, *inter alia,* default on the part of the purchaser to exercise the option in strict compliance with the terms of the agreement and that, time being the essence of the contract, delay on the purchaser's part disentitled him to a decree for specific performance.

The Federal Court held that in the circumstances of this case, the purchaser was not entitled to specific performance. The purchaser appealed.

Held, dismissing the appeal: (1) as the option was never duly exercised, the point upon which the Federal Court